

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

**SIERRA HUGHES, INDIVIDUALLY** **PLAINTIFFS**  
**AND ON BEHALF OF ALL WRONGFUL**  
**DEATH BENEFICIARIES OF JEFFERSON HUTCHINS**

**V.** **CIVIL ACTION NO. 3:09 cv 00474 HTW-LRA**

**MACK TRUCKS, INC;**  
**DICKERSON & BOWEN, INC.;**  
**ETNYRE INTERNATIONAL, LTD, f/k/a**  
**E. D. ETNYRE & CO.; and JOHN DOE**  
**DEFENDANTS 2-100** **DEFENDANTS**

**ORDER OF DISMISSAL WITHOUT PREJUDICE**

THIS CAUSE came before the Court for telephonic hearing on January 22, 2010, on Defendant Mack Trucks, Inc.'s Motion to Compel [#16], filed December 11, 2009, and its Motion to Deem Objections Waived [#19], filed December 29, 2009. By Order filed January 26, 2010 [#22], the motions were granted, and Plaintiff was assessed \$2,143.99 in costs. Plaintiff Sierra Hughes was directed to personally pay the cost award and to fully respond to Defendant's discovery, without objection, on or before February 10, 2010. By Order filed February 11, 2010 [#24], Plaintiff's counsel, William W. Fulgham, was granted leave of Court to withdraw from representing Plaintiff. In its pleadings filed January 11, 2010, [#21], Defendant Mack Trucks moved that the Court dismiss this case under Rule 41(b) of the Federal Rules of Civil Procedure due to Plaintiff's failure to prosecute.

Plaintiff was given until February 10, 2010, to comply with the terms of the Order. She failed to do so, and the United States Magistrate Judge recommended that the Complaint be dismissed without prejudice pursuant to Rule 41(b).

Mack Trucks opposed the Report and Recommendation of the Magistrate arguing, *inter alia*, that the Plaintiffs should be required to pay the \$2,143.99 in costs before re-filing. [#27].

The Court agrees. The Plaintiffs shall pay Mack Trucks the assessed \$2,143.99 before they are allowed to re-file this matter or any other matter arising out of these facts. Furthermore, Plaintiffs shall only re-file this matter or any other matter arising out of these facts in the United District Court of the Southern District of Mississippi (Jackson Division).

Plaintiffs have completely, utterly failed to adhere to the Court's Orders and to prosecute their case. This Court has the authority to dismiss an action for failure of a plaintiff to prosecute or to comply with any order of the Court both under Fed. R. Civ. P. 41(b) and under its inherent authority. *See McCullough v. Lyndaleigh*, 835 F.2d 1126 (5th Cir. 1988); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-631 (1962).

IT IS HEREBY ORDERED AND ADJUDGED that this matter is DISMISSED WITHOUT PREJUDICE pursuant to Federal Rules of Civil Procedure 41(b).

SO ORDERED, this the 24<sup>th</sup> day of March, 2010.

s/ HENRY T. WINGATE

CHIEF JUDGE

UNITED STATES DISTRICT COURT

Civil Action No. 3:09-cv-474 HTW-LRA

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